

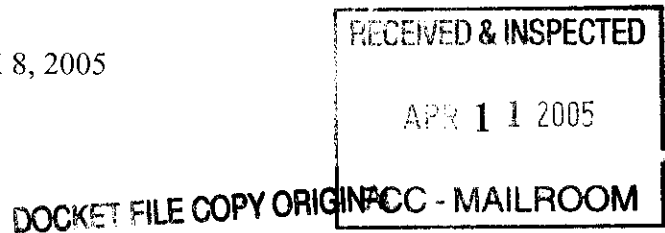
# FIBERNET

211 LEON SULLIVAN WAY • CHARLESTON, WV 25301 • 304.720.2101 • FAX: 304.720.2121

April 8, 2005

**VIA OVERNIGHT MAIL**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743



**Re: CC Docket No. 96-45  
FiberNet, LLC's Petition for Waiver**

Dear Ms. Dortch:

Pursuant to Federal Communications Commission Rule 1.3, enclosed for filing please find the original and five (5) copies of FiberNet, LLC's ("FiberNet") Petition for Waiver of FCC Rule Section 54.307(c)(4).

Please acknowledge receipt of this filing by date-stamping the extra copy of this filing and returning it to me in the enclosed self-addressed stamped envelope.

Please address any inquiries or further correspondence regarding this filing to my attention at 211 Leon Sullivan Way, Charleston, West Virginia 25301. Should you need to contact me directly, I may be reached by telephone at (304) 720-2159, by facsimile at (304) 720-2121, or by e-mail at [shamula@wvfibernet.net](mailto:shamula@wvfibernet.net).

Sincerely,

STEVEN HAMULA  
Director of Regulatory Affairs  
FiberNet, L.L.C.

No. of Copies rec'd 074  
List ASODE

SH/s  
Enclosures

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Beckley, WV 25801  
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113-115 Baltimore Street, Suite 204  
Cumberland, MD 21502  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

RECEIVED & INSPECTED

APR 11 2005

FCC - MAILROOM

In re	)	
	)	
FIBERNET, LLC	)	
	)	CC Docket No. 96-45
Petition for Waiver of FCC Rule	)	
Section 54.307(c)(4)	)	

**PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED**

FiberNet, LLC (“FiberNet”), by counsel and pursuant to Section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, hereby respectfully requests that the Federal Communications Commission (“FCC”) grant a waiver of Section 54.307(c)(4). Specifically, FiberNet requests that the FCC accept FiberNet’s loop count information as of March 30, 2005 for calculation of universal service fund support, which is being filed after the deadline established for the submittal of such information, so that vital universal service fund support to FiberNet can be received.<sup>1</sup> In support of this Petition, FiberNet respectfully states the following:

**I. BACKGROUND**

FCC Rule Section 54.307(b) states that in order to receive support, a competitive eligible telecommunications carrier like FiberNet must report the number of working loops it serves in a service area pursuant to the schedule set forth in Section 54.307(c). In order to be eligible to receive universal service fund support for the instant reporting period, FiberNet would be required to submit the working loop data required by Section

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<sup>1</sup> FiberNet files both High Cost Model and Interstate Access Support loop count information with the Universal Service Administrative Company.

54.307(b) as of September 30th of the previous calendar year (2004) by no later than March 30, 2005.

Historically, FiberNet has been timely in the submittal of its loop count information. However, with respect to the instant reporting period, the FiberNet employee that was previously charged with the responsibility of compiling and submitting the loop count information resigned on or about the time this information was to be filed with the Universal Service Administrative Company ("USAC"), and consequently, FiberNet was not able to submit its loop count information for high cost and interstate access support by March 30, 2005. FiberNet has since completed the preparation of this loop count information and submitted it to USAC for processing on April 6, 2005.

## **II. ARGUMENT**

Because FiberNet is a small, regional competitive local exchange carrier ("CLEC"), universal service fund support is critically important to the continued maintenance of FiberNet's existing operations as well for the future expansion of FiberNet's operations in West Virginia. In this regard, this universal service fund support will assist and allow FiberNet to provide competitive choice and quality telecommunications service offerings to the rural and high cost areas of West Virginia. Given this fact, it would clearly be contrary to the public interest and to the goals of the Telecommunications Act of 1996 to penalize FiberNet by not allowing it to receive vital universal service fund support merely because the line count submittal deadline of March 30, 2005 was inadvertently missed by a week.

As a general matter, FCC rules may be waived for good cause shown. Certainly, FiberNet understands that the FCC's rules are presumed to be valid.<sup>2</sup> However, the FCC may exercise its discretion to waive a rule where the particular facts present in a given case make strict compliance inconsistent with the public interest.<sup>3</sup> Additionally, the FCC may take into account considerations of hardship, equity, or the more effective implementation of overall public policy on an individual case basis.<sup>4</sup> Waiver of the FCC's rules is therefore appropriate where special circumstances warrant a deviation from the general rule, and where such deviation will serve the public interest.

In FiberNet's view, the underlying purpose of the FCC's rule governing the submittal of loop count information would not be served by its strict application in the instant case. As noted above, FiberNet's submittal of the required loop count information was only a week late and was occasioned in the first place as a result of an internal employee resignation. Certainly, no other person or entity will be prejudiced by the granting of the instant petition, and only those customers currently lacking in competitive choice in the rural and high cost areas of West Virginia will be harmed by its denial. Without a doubt, the grant of this request would clearly serve the public interest.

In addition, it is worth noting that the Universal Service Program is intended in part to promote competitive choice and access to advanced telecommunications services in areas where the costs of providing those services have been historically high. FiberNet's offering of telecommunications service to the rural and high cost areas of West Virginia would certainly further this goal. Clearly, FiberNet is entitled to receive universal service fund support at issue, and such support will enable FiberNet to expand

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<sup>2</sup> WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>3</sup> Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>4</sup> WAIT Radio, 418 F.2d at 1159; Northeast Cellular, 897 F.2d at 1166.

its operations so as to provide competitive choice and quality telecommunications service to those West Virginians located in rural and high cost areas.

### **III. REQUEST FOR EXPEDITED ACTION**

FiberNet respectfully requests that the FCC take expedited action on this Petition in order to avoid any delay in the receipt of universal service fund support. In the absence of expedited action by the FCC, FiberNet may be compelled to delay plans to further expand its telecommunications services due to the lack of universal service fund support. Subscribers located in these rural and high cost areas of West Virginia targeted for future expansion will thus be harmed by strict enforcement of this rule. In short, FiberNet asserts that special circumstances exist in the instant case which warrant deviation from the deadline established for the submittal of loop count data pursuant to Section 54.307(c)(4), and further that such deviation if permitted by the FCC will serve the public interest.

### **IV. CONCLUSION**

For all the reasons hereinabove stated, FiberNet respectfully requests that the Federal Communications Commission grant a waiver of Section 54.307(c)(4) pertaining to the deadline established for the submittal of loop count data. FiberNet also respectfully requests that the Federal Communications Commission permit the acceptance of FiberNet's loop count information by USAC so as to permit it to receive vitally important universal service fund support.

Respectfully submitted this 8<sup>th</sup> day of April, 2005.

BY:

A handwritten signature in black ink, appearing to read 'Steven Hamula', written over a horizontal line.

STEVEN HAMULA, ESQUIRE  
FiberNet, LLC  
211 Leon Sullivan Way  
Charleston, WV 25301

Tele: (304) 720-2159  
Fax: (304) 720-2121

**CERTIFICATE OF SERVICE**

I, Steven Hamula, Director of Regulatory Affairs for FiberNet, LLC, hereby certify that I have, on this 8th day of April, 2005, placed in the United States Mail, First Class, Postage Prepaid, a copy of the foregoing "Petition for Waiver" filed today to the following:

Narda Jones  
Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Irene Flannery  
Universal Service Administration Company  
2120 L. Street, N.W., Suite 600  
Washington, D.C. 20037

USAC  
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STEVEN HAMULA